

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.2, and 477A.12 and 2010 Iowa Acts, chapter 1126, the Utilities Board (Board) gives notice that on April 14, 2011, the Board issued an order in Docket No. RMU-2010-0003, In re: Revisions to Rules Governing Certificates of Franchise Authority for Cable and Video Service [199 IAC 44], “Order Adopting Amendments.” The order summarizes the comments received in response to the proposed amendments. The order adopted amendments which were published under Notice of Intended Action in IAB Vol. XXXIII, No. 9 (11/3/2010), p. 693, as **ARC 9198B**.

The amendments revise the Board’s rules at 199 IAC 44 regarding certificates of franchise authority for cable and video service providers to reflect legislative changes in 2010 Iowa Acts, Senate File 2324 (2011 Iowa Code sections 477A.2(4) and 477A.3).

The order adopting amendments is available on the Board’s Web site at www.state.ia.us/iub.

Item 1 amends rule 199—44.1(17A,476,82GA,SF554) to update references and remove language pertaining to filing fees.

Item 3 (Item 2 of the published Notice of Intended Action) amends subrule 44.3(3), which specifies the requirements for an initial application for a certificate of franchise authority. The amendment extends the time in which the Board must issue a certificate or notify an applicant that an application is incomplete from 15 business days to 30 calendar days. The amendment adds a statement, consistent with 2010 Iowa Acts, Senate File 2324, that the Board shall not issue a certificate unless the Board finds that all requirements in paragraphs 44.3(3)“a” through “i” have been met. The amendment also provides that the Board may take an additional 60 days to determine whether the requirements in new paragraphs 44.3(3)“g,” “h” and “i” have been met. Paragraph 44.3(3)“g” requires an applicant (other than an applicant with a Board-issued certificate of public convenience and necessity to provide telephone service pursuant to Iowa Code section 476.29) to include documentation that it possesses sufficient managerial, technical, and financial capability to provide service. Paragraph 44.3(3)“h” requires an applicant to provide copies of advertisements or news releases announcing the applicant’s intent to provide service; the new language provides that if such advertisements or news releases are not available at the time the application is filed, the applicant shall file copies with the Board when they are available. Paragraph 44.3(3)“i” requires an applicant to include a schedule of dates by which the applicant intends to commence operation in each municipality it proposes to serve and to file updates to the schedule.

The amendment in Item 3 also moves existing language relating to service area descriptions from the end of existing rule 199—44.3(17A,476,82GA,SF554) to paragraph 44.3(3)“d.”

In Item 4 (Item 3 of the published Notice of Intended Action), the Board adds the new notice of application required by 2010 Iowa Acts, Senate File 2324. This amendment revises rule 199—44.4(17A,476,477A) to add the new requirement in subrule 44.4(2) that a competitive provider notify affected municipalities that the provider has applied for a certificate of franchise authority from the Board; to add catchphrases to distinguish between the types of notices; to group together in one subrule all provisions relating to notice of intent to provide service; to specify that all required notices shall be sent by certified mail; and to specify that the competitive service provider must file with the Board a copy of the notice of intent to provide service on the date the notice is provided.

Item 6 (Item 4 of the published Notice of Intended Action) rescinds rule 199—44.6(17A,476,82GA,SF554) (which contains the filing fees associated with applications and subsequent notices) and adopts in lieu thereof a new rule corresponding to the provisions of 2010 Iowa Acts, Senate File 2324, dealing with revocation of certificates and reinstatement of previously terminated municipal franchises. New subrule 44.6(1) authorizes the Board to revoke a certificate in the event a certificate holder fails, within 12 months from the date the application was granted, to commence operation of the cable or video service proposed in its application. New subrule 44.6(2) provides for reinstatement, under certain circumstances, of a municipal franchise agreement previously

in effect between the incumbent cable operator and municipality before the agreement is terminated after notice from the competitive service provider of its intent to provide service, i.e., the competitive service provider whose certificate is revoked pursuant to subrule 44.6(1). New subrule 44.6(3) specifies that if a certificate holder ceases to engage in construction or operation of a cable system or video service network and is no longer providing service, the certificate holder must notify the affected municipality, the Board, and the incumbent cable operator on the date that construction or service is terminated. Subrule 44.6(3) also provides for reinstatement of a previous municipal franchise when a certificate holder ceases construction or is no longer providing service.

Item 7 (Item 5 of the published Notice of Intended Action) adds new rule 199—44.7(17A,476,477A), which allows the Board to assess its costs directly to the person filing an application for a certificate of franchise authority or subsequent notice regarding the certificate or any other proceeding relating to a certificate of franchise authority.

Item 8 (Item 6 of the published Notice of Intended Action) amends the implementation sentence in Chapter 44.

Two nonsubstantive changes have been made to the amendments as published under Notice of Intended Action. New Items 2 and 5 have been added to update the parenthetical implementation statutes for rules 199—44.2(17A,476,477A,82GA,SF2248), 199—44.3(17A,476,477A,82GA,SF2248), and 199—44.5(17A,476,82GA,SF554), and the existing items have been renumbered accordingly. In addition, the phrase “or operation of a cable system or video service network” has been deleted from the first sentence of subrule 44.6(3) because it duplicated other language in the sentence, and the term “cable or video service system” in the last sentence of subrule 44.6(3) has been corrected to read “cable system or video service network.”

These amendments are intended to implement Iowa Code sections 17A.4, 476.2 and 477A.12 and 2010 Iowa Acts, Senate File 2324.

These amendments will become effective on June 8, 2011.

The following amendments are adopted.

ITEM 1. Amend rule 199—44.1(17A,476,82GA,SF554) as follows:

199—44.1(17A,476,82GA,SF554 477A) Authority and purpose. These rules are intended to implement ~~2007 Iowa Acts, Senate File 554~~ Iowa Code chapter 477A, relating to certificates of franchise authority issued by the board for the provision of cable service or video service. The purpose of these rules is to establish procedures ~~and filing fees~~ for initial applications for and subsequent modifications, transfers, terminations, or updates of certificates of franchise authority issued by the board.

ITEM 2. Amend rules **199—44.2(17A,476,477A,82GA,SF2248)** and **199—44.3(17A,476,477A,82GA,SF2248)**, parenthetical implementation statute, as follows:

(17A,476,477A,82GA,SF2248)

ITEM 3. Amend subrule 44.3(3) as follows:

44.3(3) Initial application. Within ~~15 business~~ 30 calendar days after receiving an application and affidavit from an applicant using a form developed by and available from the board, the board shall issue a certificate of franchise authority or notify the applicant that the application is incomplete. The board shall not issue a certificate of franchise authority to an applicant unless the board finds that all of the following requirements have been met. If the board needs additional information to determine whether the requirements in paragraphs “g,” “h” and “i” are met and that determination cannot be made within the initial 30-day period, the board may docket the application for further review and take an additional 60 calendar days to make that determination. The application must be signed by an officer or general partner of the applicant and shall provide the following information:

a. A statement that the applicant has filed or will timely file with the Federal Communications Commission (FCC) all forms required by the FCC in advance of offering cable service or video service in Iowa;

b. A statement that the applicant agrees to comply with all applicable federal and state statutes, regulations, and rules;

c. A statement that the applicant agrees to comply with all applicable state laws and nondiscriminatory municipal ordinances and regulations regarding the use and occupation of a public right-of-way in the delivery of the cable service or video service, including the police powers of the municipalities in which the service is delivered;

d. A description of the service area to be served and the municipalities to be served by the applicant, including descriptions of unincorporated areas, if applicable; The service area description must be sufficiently detailed to enable the board to ascertain the boundaries of the applicant's proposed service area. Applicants certificated by the board as local exchange carriers pursuant to Iowa Code section 476.29 may choose to refer to descriptions (including maps) of local exchange service areas on file with the board.

e. The address of the applicant's principal place of business and the names and titles of the applicant's principal executive officers with direct authority over and responsibility for the applicant's cable or video operations; ~~and.~~

f. The telephone number for customer service contact.

~~The service area description must be sufficiently detailed to enable the board to ascertain the boundaries of the applicant's proposed service area. Applicants certificated by the board as local exchange carriers pursuant to Iowa Code section 476.29 may choose to refer to descriptions (including maps) of local exchange service areas on file with the board.~~

g. Documentation that the applicant possesses sufficient managerial, technical, and financial capability to provide the cable service or video service proposed in the service area. An applicant or its subsidiary which has a board-issued certificate of public convenience and necessity to provide telephone service pursuant to Iowa Code section 476.29 shall be exempt from the provisions of this paragraph.

h. Copies of advertisements or news releases announcing the applicant's intent to provide cable service or video service in the service area intended for release if the certificate of franchise authority is granted. If such items are not available at the time the application is filed, the applicant shall file copies with the board when they become available.

i. A schedule of dates by which the applicant intends to commence operation in each municipality proposed to be served within the service area. The applicant shall file timely updates to this schedule to maintain accuracy.

ITEM 4. Amend rule 199—44.4(17A,476,82GA,SF554) as follows:

199—44.4(17A,476,82GA,SF554 477A) Notice to municipality and incumbent cable provider. A competitive service provider shall notify affected municipalities and incumbent cable providers of its plan to offer service as provided in this rule.

44.4(1) Notice of intent to provide service. At least 30 days before providing service in any part of a competitive cable or video service provider's certificated service area in which the provider has not yet offered service pursuant to a board-issued certificate of franchise authority, a competitive cable service provider or competitive video service provider shall notify each municipality with authority to grant a franchise in the part of the competitive provider's service area to be served and the incumbent cable provider in that area that the competitive provider will provide service within the jurisdiction of the municipality and when such service will begin. All notices required by this subrule shall be sent by certified mail. A competitive cable service provider or competitive video service provider shall not provide service without having provided the notice required by this rule.

44.4(2) a. The competitive cable service provider or competitive video service provider shall file a copy of the notice required by this rule with the board on the date that the notice is provided.

44.4(3) b. If the competitive cable service provider or competitive video service provider determines that its entry into the market will be delayed, no further notice will be required unless market entry is delayed for more than 30 days after the date service was expected to begin.

44.4(2) Notice of application. In addition to the notice of intent to provide service, an applicant shall notify each municipality with authority to grant a franchise in the applicant's proposed service area that

the applicant has filed an application with the board for a certificate of franchise authority. This notice shall be mailed on the date the application is filed with the board and shall be sent by certified mail.

ITEM 5. Amend rule **199—44.5(17A,476,82GA,SF554)**, parenthetical implementation statute, as follows:

(17A,476,82GA,SF554,477A)

ITEM 6. Rescind rule 199—44.6(17A,476,82GA,SF554) and adopt the following **new** rule in lieu thereof:

199—44.6(17A,476,477A) Revocation of certificates, termination of service, reinstatement of previously terminated municipal franchises.

44.6(1) *Certificate holder fails to commence operation.* If a certificate holder fails to commence operation of the cable service or video service proposed in its application within 12 months from the date the board granted the certificate holder's application, the board may determine that the certificate holder is not in compliance with the certificate and may revoke the certificate. The board shall notify any incumbent cable operator affected by the revocation.

44.6(2) *Reinstatement of previously terminated municipal franchise upon revocation.* In the event a certificate is revoked as provided in subrule 44.6(1), the municipal franchise agreement which was in effect between the incumbent cable provider and municipality before being terminated pursuant to Iowa Code section 477A.2(6) and rule 199—44.5(17A,476,477A) after the certificate holder filed its notice of intent to provide service shall be reinstated for the remaining duration of the municipal franchise agreement, provided that the agreement would have remained in effect for at least 60 days prior to termination and provided that the municipal franchise agreement was terminated after April 12, 2010. Within 90 days of receiving notice from the board that a certificate has been revoked as provided in subrule 44.6(1), the incumbent cable provider shall comply with the terms of the previous municipal franchise agreement.

44.6(3) *Certificate holder ceases to provide service.* In the event a certificate holder ceases to engage in construction or ceases operation of a cable system or video service network and is no longer providing service, the certificate holder shall notify the affected municipality, the board, and the incumbent cable provider on the date that construction or service is terminated. If the municipal franchise agreement which was in effect between the incumbent cable provider and the municipality before being terminated pursuant to Iowa Code section 477A.2(6) and rule 199—44.5(17A,476,477A) after the certificate holder filed its notice of intent to provide service would have remained in effect for at least 60 days prior to termination and was terminated after April 12, 2010, the agreement shall be reinstated and shall be in effect for the remaining term of that agreement. The incumbent cable provider shall comply with the terms of the previous municipal franchise agreement within 90 days of notification by the certificate holder that it has ceased construction of a cable system or video service network or is no longer providing services.

ITEM 7. Adopt the following **new** rule 199—44.7(17A,476,477A):

199—44.7(17A,476,477A) Assessment of board costs. The board may allocate and charge the expenses attributable to its duties pursuant to Iowa Code chapter 477A directly to the person filing an application for a certificate of franchise authority or subsequent notice regarding a certificate issued by the board or any other proceeding relating to a certificate of franchise authority.

ITEM 8. Amend **199—Chapter 44**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 17A.4 and 476.10 and ~~2007 Iowa Acts, Senate File 554~~ chapter 477A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/4/11.